



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1082 (Modification)]

Certain Gas Spring Nailer Products and Components Thereof; Institution of a Modification Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a modification proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 20, 2017, based on a complaint filed on behalf of Kyocera Senco Brands Inc.¹

("Kyocera" or "Requester") of Cincinnati, Ohio. 82 *Fed. Reg.* 55118-19 (Nov. 20, 2017).

The complaint, as amended and supplemented, alleged violations of section 337, based upon the

¹ During the investigation, Kyocera Senco Brands Inc. changed its name to Kyocera Senco Industrial Tools, Inc. See Final Initial Determination at 3 n.3 (citing Kyocera's Initial Post-Hearing Br. at 4 n.3).

importation into the United States, the sale for importation, and the sale within the United States after importation of certain gas spring nailer products and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,387,718 (“the ’718 patent”); 8,011,547 (“the ’547 patent”); 8,267,296 (“the ’296 patent”); 8,27,297 (“the ’297 patent”); 8,286,722 (“the ’722 patent”); and 8,602,282 (“the ’282 patent”).² The complaint further alleged the existence of a domestic industry. The Commission’s notice of investigation named as a respondent Hitachi Koki U.S.A., Ltd.³ (“Koki”) of Braselton, Georgia. The Office of Unfair Import Investigations did not participate in the investigation. The ’547 patent was terminated from the investigation and, prior to the evidentiary hearing, the parties stipulated that the ’718 patent is the only patent at issue since no violation could be shown as to the ’296, ’297, ’722, and ’282 patents. *See* Order No. 28 (Oct. 24, 2018); *see also* Joint Stipulation Regarding Order No. 28 (Oct. 26, 2018).

On March 5, 2020, the Commission issued its final determination finding a violation of section 337 based on infringement, satisfaction of the domestic industry requirement, and non-invalidity with respect to the ’718 patent. 85 *Fed. Reg.* 14244-46 (Mar. 11, 2020). The Commission issued a limited exclusion order (“LEO”) directed against Koki’s infringing products, and a cease and desist order (“CDO”) directed against Koki. *Id.* On July 1, 2020, Koki filed an appeal to the U.S. Court of Appeals for the Federal Circuit which is currently pending (Appeal No. 20-2050).

² The Commission terminated the ’547 patent from the investigation in June 2018. *See* Order No. 13 (June 4, 2018), unreviewed by Comm’n Notice (June 22, 2018).

³ During the investigation, Hitachi Koki U.S.A., Ltd. changed its name to Koki Holdings America Ltd. *See* Hitachi’s Initial Post-Hearing Br. at 3.

On June 30, 2020, U.S. Customs and Border Protection issued a ruling, pursuant to 19 C.F.R. Part 177, that a redesign of Koki's is outside of the scope of the LEO issued in the investigation. In response, on August 17, 2020, Kyocera petitioned for institution of a modification proceeding, requesting the Commission to determine if the redesign is outside of the scope of the LEO and CDO and to modify the orders to specify the status of the redesigns. On August 27, 2020, Koki filed an opposition to the petition.

The Commission has determined that Requester's petition complies with the requirements for institution of a modification proceeding under Commission Rule 210.76(a)(1) (19 CFR 210.76(a)(1)) to determine whether Koki's redesigned, accused products infringe claims 1, 10, or 16 of the '718 patent and whether the order should be modified to specify that. Accordingly, the Commission has determined to institute a modification proceeding and refer Requester's petition to the Chief Administrative Law Judge as detailed in the accompanying Order. The assigned ALJ will make findings, may request briefing, and will issue a recommended determination ("RD") to the Commission at the earliest practicable time after the date of publication of this notice in the *Federal Register*. The Commission will issue a modification opinion within 60 days of receipt of the ALJ's RD unless the Commission otherwise orders. The following entities are named as parties to the proceeding: (1) Kyocera and (2) Koki.

The Commission vote for this determination took place on September 16, 2020.

The authority for the Commission's determination is contained in sections 335 and 337 of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1335, 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: September 16, 2020.

Lisa Barton,

Secretary to the Commission.

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